

18 JUL 2008



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600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

In re Application of	:	
Barney et al.	:	
Application No.: 10/574,386	:	DECISION
PCT No.: PCT/US04/32160	:	
Int. Filing Date: 02 October 2004	:	ON
Priority Date: 02 October 2003	:	
Attorney Docket No.: TEVNHC 3.3-083	:	PETITION
For: Dry Powder Inhalation Apparatus	:	

This is in response to the renewed petition under 37 CFR 1.47(a) filed on 21 April 2008.

DISCUSSION

In a Decision mailed on 18 September 2007, the petition under 37 CFR 1.47(a) filed on 02 May 2007 was dismissed, without prejudice, because petitioner had not adequately demonstrated the unavailability of joint inventors O'Leary and Striebig, and because the declaration document filed on 02 May 2007 appeared to be defective.

In response, regarding the unavailability of David O'Leary, petitioner presents an "Affidavit of Samantha Claire Radley," in which Ms. Radley details her attempts to ascertain the whereabouts of Mr. O'Leary. Ms. Radley provides a copy of a DHL envelope addressed to Mr. O'Leary and returned as "NOT KNOWN AT THIS ADDRESS," and explains further her attempts to locate him, including internet searches and personal inquiries. Based on the totality of the evidence now of record, it would be appropriate to conclude that Mr. O'Leary could not be found or reached after diligent effort within the meaning of 37 CFR 1.47(a).

Regarding the availability of inventor Striebig, petitioner has presented a declaration executed by her. Petitioner has also provided a newly executed declaration by joint inventor Brian Barney. These declarations satisfy requirement (4) of 37 CFR 1.47(a).

DECISION

The petition under 37 CFR 1.47(a) is **GRANTED**.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

The application is being returned to the National Stage Processing Branch for processing as the U.S. National Stage of the above-identified international application. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **21 April 2008**.

/George Dombroske/
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UNITED KINGDOM

In re Application of
Barney et al.
Application No.: 10/574,386
PCT No.: PCT/US04/32160
Int. Filing Date: 02 October 2004
Priority Date: 02 October 2003
Attorney Docket No.: TEVNHC 3.3-083
For: Dry Powder Inhalation Apparatus

Dear Mr. O'Leary:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at (571) 272-3283. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Requests for information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1(800) 972-6382 (outside the Washington D.C. area).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/George Dombroske/
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OFFICIAL GAZETTE NOTICE

37 CFR 1.47 Notice by Publication

Notice is hereby given of the filing of an application with a petition under 37 CFR 1.47 requesting acceptance of the application without the signature of a joint inventor. The petition has been granted. A notice has been sent to the last known address of the non-signing inventor. The inventor whose signature is missing (David O'LEARY) may join in the application by promptly filing an appropriate oath or declaration complying with 37 CFR 1.63. The international application number is PCT/US2004/032160 and was filed on October 2, 2004 in the names of Brian BARNEY, David O'LEARY and Rachel STRIEBIG for the invention entitled DRY POWDER INHALATION APPARATUS. The national stage application number is 11/791,336 and has a 35 U.S.C. 371(c)(1), (2) and (4) date of April 21, 2008.